

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

ELK GROVE UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013010165

ORDER GRANTING MOTION FOR
STAY PUT

On January 8, 2013, Student filed a motion for stay put. Exhibits, including a copy of an individualized education program (IEP) dated October 27, 2011, and other IEP's and notes are attached to Student's motion. The exhibits are not authenticated. Student avers the last consented to IEP is dated October 27, 2011. Student brings this motion because District has not implemented the October 27, 2011 IEP for the 2012-2013 school year. Student contends the October 27, 2011 IEP offered specialized academic instruction (RSP) in math and English for 165 minutes per day, 30 minutes of speech and language therapy thirty times per year, and "Grid 9 accommodations" as needed.¹

On January 11, 2013, District filed a response to Student's motion. District avers that no formal order is required because District does not dispute the implementation of the October 27, 2012 IEP while this dispute is pending. According to District, Student's current class schedule does not include 165 daily minutes of specialized academic instruction in math and English. District agrees to change Student's class schedule to include these minutes and to provide the Grid 9 accommodations attached to the October 27, 2011 IEP. District makes no mention of speech and language services.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational

¹ Page 16 of Student's Exhibit 1, purportedly the October 27, 2011 IEP, contains nine boxes in three rows which have various accommodations, such as more frequent time breaks and use of a calculator, checked. These nine boxes are titled Quantity, Time, Level of Support, Input, Difficulty, Output, Participation, Alternate Goals and Substitute Curriculum. The document is not titled, it is assumed that these are the "Grid 9" accommodations referenced by the parties.

placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

A dispute exists as to Student’s placement and services. District has not provided the placement and services contained in the October 27, 2011 IEP while this dispute is pending. District’s response agrees the October 27, 2011 IEP is the last implemented IEP, and that it “will agree” to change Student’s schedule in order to provide RSP in math and English, and provide Grid 9 accommodations. District does not address speech and language services. Accordingly, Student’s motion for stay put is granted.

ORDER

1. Student’s Motion for Stay Put is granted.
2. Student’s stay put placement is set forth in the October 27, 2011 IEP, and includes RSP in math and English for 165 minutes per day, 30 minutes of speech and language therapy thirty times per year, availability of support from classroom paraeducators in English, math and social studies, and “Grid 9 accommodations” as needed.

Dated: January 16, 2013

/s/

MARIAN H. TULLY
Administrative Law Judge
Office of Administrative Hearings